

Michael H. Simon, OSB No. 860908  
[MSimon@perkinscoie.com](mailto:MSimon@perkinscoie.com)  
Sarah J. Crooks, OSB No. 971512  
[SCrooks@perkinscoie.com](mailto:SCrooks@perkinscoie.com)  
Stephanie K. Hines, OSB No. 023273  
[SHines@perkinscoie.com](mailto:SHines@perkinscoie.com)  
PERKINS COIE LLP  
1120 N.W. Couch Street, Tenth Floor  
Portland, OR 97209-4128  
Telephone: 503.727.2000  
Facsimile: 503.727.2222

Attorneys for Defendant Qwest Corporation

**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION**

**NICKOLAS FACAROS,**

Case No. 10-6343-HO

Plaintiff,

**DEFENDANT'S MOTION TO DISMISS**

v.

Request for Oral Argument

**QWEST CORPORATION**, a Colorado  
Corporation,

Defendant.

---

Pursuant to Local Rule 7.1(a), defendant, Qwest Corporation ("Qwest"), certifies that the parties made a good faith effort through telephone conferences to resolve the dispute. The parties have been able to resolve one issue, as noted in the supporting memorandum of law, but have been unable to resolve the remaining issues addressed in this motion to dismiss.

Pursuant to the filed-rate doctrine, Qwest moves this Court for an order dismissing with prejudice each of Plaintiff's claims as barred by Qwest's tariff governing the rates and manner

1- DEFENDANT'S MOTION TO DISMISS

Qwest may bill for the relocation of its aerial cable facilities. Alternatively, Qwest moves pursuant to the primary jurisdiction doctrine for an order dismissing with prejudice each of Plaintiff's claims in favor of jurisdiction by the Oregon Public Utility Commission.

Additionally, pursuant to Federal Rule of Civil Procedure 12(b)(6), Qwest moves to dismiss with prejudice the First Amended Complaint and each of the claims alleged for failure to state a claim upon which relief can be granted. And pursuant to Federal Rule of Civil Procedure 9(b), Qwest moves to dismiss with prejudice the Complaint and each of the claims alleged for failure to allege the fraud allegations with sufficient specificity.

This Motion is supported by the pleadings and concurrently filed supporting Memorandum of Law.

DATED: March 7, 2011

**Respectfully submitted,**

**PERKINS COIE LLP**

By: *s/ Sarah J. Crooks*

---

Michael H. Simon, OSB No. 860908

[MSimon@perkinscoie.com](mailto:MSimon@perkinscoie.com)

Sarah J. Crooks, OSB No. 971512

[SCrooks@perkinscoie.com](mailto:SCrooks@perkinscoie.com)

Stephanie K. Hines, OSB No. 023273

[SHines@perkinscoie.com](mailto:SHines@perkinscoie.com)

1120 N.W. Couch Street, Tenth Floor

Portland, OR 97209-4128

Telephone: 503.727.2000

Facsimile: 503.727.2222

Attorneys for Defendant Qwest Corporation